

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Mario DeCarlo and Frances DeCarlo (Claimants) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Ronald M. Gellmann (Respondents)

Case Number: 05-02784

Hearing Site: New York, New York

Nature of the Dispute: Customers vs. Member and Associated Person

REPRESENTATION OF PARTIES

Claimants Mario DeCarlo ("M. DeCarlo") and Frances DeCarlo ("F. DeCarlo") hereinafter collectively referred to as "Claimants": Bruce V. Schewe, Esq. and David L. Patron, Esq., Phelps Dunbar LLP, New Orleans, LA.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Ronald M. Gellmann ("Gellmann") hereinafter collectively referred to as "Respondents": Timothy P. Burke, Esq. and Dimitri Nemirovsky, Esq., Bingham McCutchen LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 26, 2005.

M. DeCarlo signed the Uniform Submission Agreement: May 26, 2005.

F. DeCarlo signed the Uniform Submission Agreement: May 26, 2005.

Statement of Answer filed by Respondents on or about: September 8, 2005.

Merrill Lynch signed the Uniform Submission Agreement: June 28, 2005.

Gellmann signed the Uniform Submission Agreement: August 4, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract, breach of fiduciary duty, suitability, failure to supervise, and violation of NASD Rules. The causes of action relate to unspecified equities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$1,000,000.00, punitive damages in the amount of \$500,000.00, costs, forum fees, expert witness fees, attorneys' fees, and all other relief that the Panel views as just.

Respondents requested dismissal of the Statement of Claim in its entirety and such other, further, and different relief as the Panel may deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing Respondent Gellmann requested expungement of this matter from his CRD record. The Panel heard testimony on Respondent Gellmann's expungement request. After due deliberation, the Panel denied Respondent Gellmann's request for expungement.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing Process fee	= \$ 750.00

Hearing Process fee = \$ 5,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 2,400.00

Pre-hearing conferences: December 13, 2005 1 session
April 20, 2006 1 session

Fourteen (14) Hearing sessions with Panel @ \$1,200.00 = \$16,800.00

Hearing dates: August 15, 2006 2 sessions
August 16, 2006 2 sessions
August 17, 2006 2 sessions
August 23, 2006 2 sessions
August 24, 2006 2 sessions
October 31, 2006 2 sessions
November 1, 2006 2 sessions

Total Forum Fees = \$19,200.00

1. The Panel has assessed \$9,600.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$9,600.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 9,600.00
Total Fees	= \$ 10,100.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 8,400.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Forum Fees	= \$ 9,600.00
Total Fees	= \$ 9,600.00

Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 9,600.00

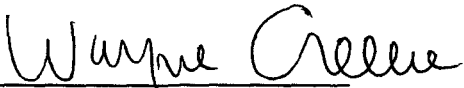
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

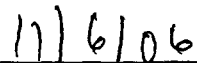
Wayne P. Greene, Esq.	-	Public Arbitrator, Presiding Chairperson
Dwight Wassong, Esq.	-	Public Arbitrator
Jean C. Black	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Wayne P. Greene, Esq.
Public Arbitrator, Presiding Chairperson


Signature Date

Dwight Wassong, Esq.
Public Arbitrator

Signature Date

Jean C. Black
Non-Public Arbitrator

Signature Date

November 8, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

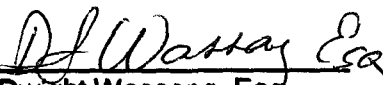
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Signature Date



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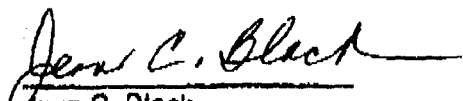
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Public Arbitrator, Presiding Chairperson

Signature Date

Dwight Wassong, Esq.
Public Arbitrator

Signature Date



Jean C. Black
Non-Public Arbitrator

11/3/06

Signature Date

November 8, 2006
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